In the High Court of Judicature at Madras

Dated:19.02.2007

Coram

The Honourable Mr.Justice A.C.ARUMUGAPERUMAL ADITYAN

Second Appeal No.521 OF 1997

1. The State of Tamil Nadu
   rep. By the District Collector
   South Arcot District.

2. The Tahsildar, Panruti. ..Appellants/Defendants

v

Kasthuribai Baskaran ..Respondent/plaintiff

This second appeal filed against the judgment and decree dated 28.2.1994 made in A.S.No.76 of 1993 on the file of the Court of Subordinate Judge,Cuddalore against the decree and Judgment in O.S.No.52 of 1988 on the file of the Court of District Munsif, Panruti, dated 29.7.1992.

For Appellants : Mr.V.Srikanth,A.G.P(C.S)
For Respondent : Ms.Hema Sampath,Senior Counsel
for Mr.S.Venkateswaran

JUDGMENT

This appeal has been preferred against the Judgment and decree in A.S.No.76 of 1993 on the file of the Court of Subordinate Judge, Cuddalore. The defendants in O.S.No.52 of 1988 on the file of the Court of the District Munsif, Panruti are the appellants herein.

2. The averments in the plaint in brief sans irrelevant particulars are as follows:
The plaint schedule property is an erstwhile shrotrium village of Sirugramam ,Panruti Taluk. The property originally belonged to one Muruvan Samban, Manicka Samban and Ayyakannu Samban, sons of Udukkai Samban. They were in possession and enjoyment of the suit property. On 20.6.1945, they executed a sale deed in respect of the suit property in favour of the first plaintiff. Since the property was not surveyed at the time of execution of the sale deed, only the boundary description were

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given to the property sold under the sale deed since the property is a shrotrium property. After the purchase, the first plaintiff had sunk a bore well and installed electric motor pumpset and was doing cultivation in the suit property. The first plaintiff is in possession and enjoyment of the suit property continuously for more than 43 years. Prior to the purchase by the first plaintiff, his predeceassors-in-title were in possession and enjoyment of the suit property. After the Abolition of Inam, the property was surveyed. The first plaintiff's possession was recognised and the revenue records will go to establish his title and possession to the property. Subsequently, a notice was served on the first plaintiff's daughter Susila Ammal in respect of the suit property informing that her possession in the suit is encroachment of Government right. The first plaintiff was naturally shocked and surprised when he learnt that Government has chosen to sent notice of encroachment to his daughter. She has neither title nor interest in the suit property. The first plaintiff came to know that an enquiry was conducted by the Settlement Tahsildar in respect of the suit property and treated the suit property as Tharisu land. The first plaintifif is not aware of the proceedings initiated, , he had no notice. The Village Administrative Officer also never informed him about the same. Even though after the alleged proceedings by the Settlement Tahsildar, the first plaintiff alone is in possession of the suit property. The first plaintiff was also informed the Government through several letters informing that he is in possession and enjoyment of the suit property and patta may be granted in his favour and also to correct the revenue records suitably. But all his representations were ended in vain, the first plaintiff has issued a notice under Section 80 CPC to the first defendant. The said notice was served on the first defendant on 16.10.1987 but the first defendant has not chosen to send any reply to the said notice. Hence the suit for declaration of his title and for consequential injunction.

3. The first defendant has adopted the written statement filed by the second defendant as follows:-

The plaint schedule property was originally Malatar Poramboke in surothiram Village. The Pymash No.27 was Malattar Poramboke. After the conversion of Surothiram to Ryotwari Survey records were made and settlement register were came into existence. The Pymash No.27 has been surveyed and numbered as R.S.No.195/3,0.34.0 hectares. The suit property never belonged to Muruvan Samban, Manicka Samban and Ayyakannu Samban, sons of Udukkai Samban. Under the sale deed dated 20.6.1945, the plaintiff has not derived any title in respect of the suit property. The plaintiff was never in possession and enjoyment of the suit property. Even the plaintiff was in possession of the suit property, he is to be considered only an unauthorised occupant as per law. He is only a trespassor as against the Government. The suit property is not a patta land. Neither the plaintiff nor his predecessors-in-title were in possession and enjoyment of the suit property for the past 43 years as alleged in the plaint. The plaintiff has not prescribed title by way of adverse possession. Since the property was assessed as waste dry land, anybody who is in possession of the property is liable to pay Taram

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Assessment, after receiving "B" memos. In this case also "B" memo was issued in respect of the suit property to the plaintiff and he has also paid the Taram Assessment as an unauthorised occupant during Fasli 1388. The first plaintiff's daughter Susila Ammal is in possession and enjoyment of the suit property unlawfully in faslis 1391 to 1395. Hence "B" memos were issued to her during the Faslis 1391 to 1395. She has also paid Taram Assessment for the suit property. In 1981, the plaintiff has applied through her daughter Susila Ammal for getting assignment in her name and her applications were rejected as she possessed of her own more prescribed extent and she is not a landless poor. Aggrieving with that, the plaintiff has come forward with the present suit with full and false allegations. In the year 1971, the plaintiff himself is participated in an enquiry regarding the settlement in R.S.Nos.184/11,195/2 & 184/13 and his contention is also upheld. Having participated in the enquiry of the adjacent land to the suit property , it is curious to say that he is not aware of the proceedings and now alone, he learnt about the enquiry. Even though in the year 1971, as per the Settlement Enquiry, the suit property was classified as Assessed Waste Dry land, after resurvey. If any person is affected by the order in the settlement proceedings conducted as per Inam Abolition Act 26 of 1963, he should prefer an appeal against the said order within three months. So far no person including the present plaintiff has not preferred any appeal as against that order, since the plaintiff was not entitled to any interest over the suit property,the said order has not been revised or altered and hence the order passed by the Settlement Tahsildar in 1971 is final and conclusive one. Hence the suit is liable to be dismissed.

4. On the above pleadings, the trial Court had framed four issues for trial. On the side of the plaintiff, P.Ws1 to 5 were examined and Exs P1 to P28 were marked. On the side of the defendants, D.W.1 was examined and Exs B1 to B13 were marked.

5. After going through the oral and documentary evidence, the learned trial Judge has come to a conclusion that the plaintiff is not entitled to the relief asked for in the plaint and accordingly dismissed the suit with costs. Aggrieved by the findings of the learned trial judge, the plaintiff has preferred an appeal in A.S.No.76 of 1993 on the file of the Court of Subordinate Judge, Cuddalore. The learned first appellate Judge, after due deliberation, has come to a conclusion that the appellant is entitled to a decree as prayed for in the suit and accordingly allowed the appeal thereby setting aside the decree and Judgment of the learned trial judge. Hence the second appeal before this Court by the defendants.

6. The substantial questions of law involved in this appeal are

" 1. When the plea of adverse possession available to a person who has been served with B Memo and who has paid a penal assessment without any demand or protest?

2. Can it be taken as a Judgment rendered by the appellate Court since the plaintiff(respondent in the second appeal) estopped from claiming title in view of

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any earlier application made by her for the assessment of land in the year 1981 under the Dharkast rules?

7. The Points:

The plaint schedule property is survey No.195/3 having an extent of 0.34.0 hectares equivalent to Pymash No.27, Shrotrium Half Cawine 0.8.0 with a bore well and service connection. Even in Ex A1,it has been clearly stated in the schedule of property that the land sold under Ex A1 is the Shrotrium land. The first plaintiff claims that from the date of Ex A1, he is in possession and enjoyment of the property and that he has prescribed title to the suit property by way of adverse possession. In support of his contention, the learned counsel appearing for the respondent/plaintiff would rely on Ex A6 to A13. Ex A6 is the copy of the settleement register for Sirugramam Village. A perusal of Ex A6 will go to show that the name of the inamdars for suit survey No.195/3 measuring one acre was in the name of the first plaintiff. But there is an endorsement at column No.28 to the effect that the petition filed by the Inamdars viz., the first plaintiff was disallowed in RP.294/IA and/70 dated 6.3.1971. So on the basis of this endorsement, the appellant/Government would contend that the land as per the settleement enquiry conducted in RP 294/1A and 70 dated 6.3.1971 has been taken over by the Government. In support of this contention, the appellants/defenants/Government have examined an Assistant in the Panruti Taluk Office, as D.W.1. He would admit that against the order of the Settlement Tahsildar, an enquiry was conducted under Act 26 of 1963. The defendant has preferred an appeal before the learned Subordinate Judge, Cuddalore in I.A.T.2 of 1989 and that he would admit that patta has been granted in respect of the suit property in favour of the first defendant in the settlement enquiry. In the cross examination, he would admit that the suit property is a Shrotrium Village and that Pymash suit survey number property is 27 and not 33. He would go to the extend of denying the entries made in Ex A6 copy of the settlement register to the effect that the first defendant was in possession and enjoyment of the suit survey number property. But he would admit that "B" Memos were issued in favour of Susila Ammal, the daughter of the first plaintiff for some years.

8. The learned counsel appearing for the respondent relying on a decision reported in Srinivasan and six others-vs-Sri Madhyarjuneswaraswami, Pattavaithalai,Tiruchirappalli District by its Executive Officer at Pettavaithalai Devasthanam and 5 others(1998(2) L.W.1989) and contended that the Civil Court has got jurisdiction to try the issue and relying on the above said dictum,the learned counsel appearing for the respondent would contend that the Civil Court is competent to nullify the order passed in the Inam Proceedings. It has been held in the above said dictum as follows:

> "A comparison of the provisions contained in the Abolition Act, the Inams Abolition Act as also the Minor Inams Act, would go to show that the ultimate object of one or the other of these legislations is the introduction of ryotwari settlement in the areas

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> covered and notified under the respective enactments, after abolishing existing land tenure and acquiring the rights of the landholders or inamdars concerned, who, under the system of land tenure which was in vogue in those areas were considered to be intermediaries in between the actual tiller of the soil and the State and that the other provisions pertaining to the constitution of authorities, their powers, jurisdiction and the finality given to the orders passed, or incorporation of a provision in the nature of res judicata providing for the binding nature of the orders on the parties to the same and persons claiming under them in any suit or proceeding in a civil Court in so far as such matters are in issue between the parties or persons in such suit or proceeding, are almost identical and similar, except certain differences which, may not be that much relevant for the issue before us."

There cannot be two opinion in respect of jurisdiction of a Civil Court over the order passed by the revenue officials under Act 30 of 1963. But here the important point to be noted is that even though the appellants are the custodian of the revenue records, they have not produced the relevant file relating to RP 294/1A/70 dated 6.3.1971 in which the claim of the first plaintiff for assessment of patta in his name is said to be rejected. A perual of the evidence of D.W.1 will go to show that "B"Memo for some years were issued in the name of Susila Ammal, the daughter of the first plaintiff. It is not known under what circumstances, "B"Memos were issued by the Government in the name of Susila Ammal , the daughter of the first plaintiff while the first plaintiff's name alone figures under the settlement Register Ex A6 showing that he is in possession of the plaint schedule property.

9. The learned counsel appearing for the respondent relying on Section 3 of the Tamil Nadu Regulations, Estates and Inams Abolition and Ryotwari Settlement Acts contended that his possession in respect of the suit property as per Ex A6 is to be upheld and recognised by the Government, even though the land belongs to the Government. In support of his contention, the learned counsel would rely on the ratio of this Court in Angappa Gounder-vs-Sivamani Gounder(100 L.W.721)wherein a Division Bench of this Court has held as follows:

> "The legislature, by enacting Act 30 of 1963 thought fit to recognise the possessory right acquired and to impose a ryotwari assessment on such lands. Act 30 of 1963 was enacted not with a view to take over the entire interest but only for the purpose of abolishing the Inam tenure and convert the same into Ryotwari tenure. The result is the assessmennt is levied on the lands and the right vested in the person in possession is recognised. The rights of a ryot who is in

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enjoyment of a minor Inam land, who is lawfully entitled to the Kudiwaram right and who satisfies the conditions laid down under the Act, are recognised and a ryotwari patta is given to him under the provisions of Act 30 of 1963. Thus the rights are not extinguished as in the case of estates, but on the other hand the right in the minor Inams lands is confirmed and recognised by the issue of ryotwari patta. The vesting contemplated under Act 30 of 1963 is a notional vesting to enable the Government to effect a settlement and levy assessmenet. The rights of the persons in possession conforming to the conditions laid down in the said Act are not affected by the provisions of Act 30 of 1963. The proviso to S.3 of Act 30 of 1963 lays down that the Government shall not dispossess any person of any land in a minor inam in respect of which the person in possession is entitled to ryotwari patta pending decision of the appropriate authority under the Act, as to whether the person is entitled to ryotwari patta."

There is absolutely no document produced by the appellants to show that under what circumstances, the ryotwari patta was rejected to the first plaintiff under the Act 30 of 1963. Only if the entire enquiry records in RP 294/1A/70 dated 6.3.1971 is produced then only we can come to the conclusion and appreciation whether the claim of the first plaintiff was correctly rejected by the Ryowari Officials

10. This Court can even direct the appellants to produce relevant records but I am afraid whether those records can be straightaway exhibited before this Court without following the procedures laid down under law. After examining the proper witnesses for marking those documents and after giving an opportunity to cross examine those witnesses only the said documents can be received in this case. Under such circumstances, this Court is of the view that this is a fit case to be remanded to the trial Court for giving an opportunity to both the parties to let in further evidence and particularly the Government/appellants to produce the relevant records relating to the enquiry proceedings conducted under provisions of Act 30 of 1963. Points are answered accordingly.

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11. In the result, the appeal is allowed and the decree and Judgment in A.S.No.76 of 1993 on the file of the Court of the Subordinate Judge, Cuddalore is set aside and the matter is remitted to the trial Court for production of the relevant files by the Government as indicated above. Both parties are at liberty to let in further evidence before the trial Court. The learned trial Judge is directed to dispose of the matter within two months from the date of receipt of a copy of this order. No costs.

sg

Sd/-
Asst.Registrar

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Sub Asst.Registrar

To

1. The Subordinate Judge,Cuddalore.

2. The District Munsif, Panruti.

3. The Section Officer,
   V.R.Section, High Court, Madras.

+2 ccs to M/s.Hema Sampath, Advocate Sr.No.9987,9762.

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